

REMARKS/ARGUMENTS

Claims 1-49, 51-52, 54-59 and 87-114 are pending in the application. Claims 1-48, 87-93, and 100-114 have been withdrawn from consideration. Claims 49, 51, 52, 54-59, and 94-99 have been rejected. No claims have been allowed. Reconsideration of the rejection is requested in view of the following remarks and the enclosed Declaration under 37 C.F.R. § 1.312.

It is noted with appreciation all previous prior art rejections have been withdrawn and the rejection of claim 98 under 35 U.S.C. § 112, second paragraph, has been withdrawn.

Claims 49, 51, 52, 54, 96, and 97 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Wilkins et al. U.S. Patent No. 5,215,675 (Wilkins et al. '675) in view of Gross et al. U.S. Patent No. 6,824,623 (Gross et al. '623).

The Wilkins et al. '675 patent discloses a stripping composition that includes hydrogen peroxide for stripping paint and resin from an aircraft 2024 aluminum alloy surface and a corrosion test for testing the corrosiveness of the stripping composition on the 2024 aluminum alloy. This test is intended to simulate crevice corrosion of aircraft exterior panels that use 2024 aluminum alloy. The Wilkins et al. corrosion test is a simulated atmospheric test in which the relative humidity in a chamber is cycled between high and low magnitudes at one atmospheric pressure. 2024 aluminum has a 3.8 to 4.9% copper content specification and is typically used in aircraft exterior panels. The problem faced by Wilkins et al. is the potential corrosion between joints of aluminum aircraft panels after a stripping composition had been used to strip paint from the aircraft panels. Therefore, Wilkins et al. tested various stripping compositions against a standard to determine if their stripping formula would corrode the joints between aircraft panels more than deionized water. It is noted that the Wilkins et al. '675 patent does not disclose packaging any paint stripping composition with an aerosol propellant in an aerosol container.

The Gross et al. '623 reference discloses a graffiti remover, paint stripper and degreaser cleaning composition containing an oil-soluble anionic surfactant, a water-soluble anionic surfactant, a primary solvent consisting of a C₁₋₄ alkyl ester, a short-chain cosurfactant and water. In particular, the composition includes both an oil-soluble anionic surfactant and a water-soluble anionic surfactant from about 3 to about 95% by weight of a primary solvent consisting of a C₁₋₄

alkyl ester of a C₆₋₂₂ to saturated or unsaturated carboxylic acid, from about 2 to about 14% by weight percent of a short-chain cosurfactant and remainder water, always being based on the total weight of the composition. Gross et al. '623 discloses further that the disclosed cleaning compositions can be packaged in a variety of containers, such as steel, tin, aluminum cans and plastic and glass bottles. The cleaning compositions can further be applied by a variety of applications which include spraying such as in aerosol form. Gross et al. '623 further discloses that a corrosion problem can arise when the cleaning compositions according to the invention are packaged in metal cans. Cans and particularly aerosol cans are generally made from steel and are, therefore, susceptible to corrosion by aqueous compositions. Gross et al. is concerned about the possibility of corrosion in the packaging of the Gross et al. composition in lined steel cans, and in particular, lined aerosol steel cans. Thus, the Gross et al. '623 compositions require the addition of a corrosion inhibitor to prevent corrosion of a can by contamination of the formulation in the can. A variety of corrosion inhibitors are disclosed and recited in the claims. It is noted that the cleaning composition of Gross et al. '623 does not disclose a hydrogen peroxide composition. Nor does Gross et al. '623 disclose the use of the Gross et al. '623 composition in a bare aluminum aerosol can.

The alleged combination of Wilkins et al. '675 and Gross et al. '623 is traversed. There is no basis for making the combination and the Examiner has given no cogent reason for the combination. Although both compositions (Wilkins et al. '675 and Gross et al. '623) relate to paint strippers, they do not relate to the art of aerosol packaging. The Examiner's argument that it would have been obvious to one of ordinary skill in the art at the time of the invention is made to package the composition of Wilkins et al. in aerosol cans made from aluminum is unfounded and not suggested by either of the Wilkins et al. '675 and Gross et al. '623 references. Wilkins et al. '675 does not disclose the desirability of aerosol spraying a stripping composition onto aluminum panels and Gross et al. '623 does not disclose spraying of stripping compositions using an aerosol can made of aluminum. There is no discussion in Wilkins et al. '675 of packaging the stripping composition in aluminum cans or of packaging the Wilkins et al. '675 stripping composition with an aerosol propellant in a bare aluminum can. Gross et al. disclose that their

particular composition, which does not contain peroxide, can be mixed with an aerosol and sprayed from an aerosol can, but with a corrosion inhibitor in lined steel cans. No mention is made of an aluminum aerosol can. In view of the foregoing, there is no fundamental reason why the stripping composition of Wilkins et al. '675 would be packaged in a bare aluminum can with an aerosol propellant.

The Examiner has referred to the testing of the Wilkins et al. '675 composition on bare aluminum panels for corrosion. The testing of the Wilkins et al. '675 composition on uncoated 2024 aluminum alloy samples with the Boeing Company corrosion test D6-17487 is not a test to determine the suitability of packaging a hydrogen peroxide cleaning solution (not a stripping solution) in a bare aluminum can. Whether the Wilkins et al. '675 stripping composition could theoretically be packaged in a bare aluminum aerosol can with an aerosol propellant would certainly not have been a conclusion that can be extracted from the teaching of the Wilkins et al. '675 reference. Whether or not the Wilkins et al. '675 composition can in fact be used in an aerosol composition in a bare aluminum container can only be determined by testing in accordance with the aerosol test standards and in bare aluminum cans. 2024 aluminum alloy is not an alloy that is used for aluminum aerosol cans. The testing done on the aluminum alloy 2024 with the Boeing Commercial Airplane Division corrosion test would not give one skilled in the art of aerosol packaging any cogent evidence as to whether the Wilkins et al. '675 composition could be packaged in an aerosol can.

In fact, the test with the percent of corrosion would undoubtedly show that corrosion on any level, especially 55% for composition K, would be wholly unsuitable for packaging in a bare aluminum can.

Enclosed herewith is a Declaration Under 37 CFR § 1.132 of William Stephen Tait, PhD (Tait Declaration) in support of Applicants' position as to the Examiner's alleged combination of the Wilkins et al. '675 and the Gross et al. '623 references and the Examiner's conclusion that it would be obvious to package the Wilkins et al. '675 composition with an aerosol propellant in a bare aluminum aerosol can. Dr. Tait, who is an expert in the field of corrosion in aerosol containers, has analyzed the Wilkins et al. '675 reference and the Gross et al. '623 reference and

has concluded that the Wilkins et al. '675 and the Gross et al. '623 references, when considered as knowledge of one skilled in the aerosol packaging art, would not have taught or suggested to an ordinary worker skilled in the art of aerosol packaging that it would have been obvious to package the stripping composition of Wilkins et al. '675 with an aerosol propellant in aerosol cans made from bare aluminum. Tait Declaration ¶21.

In particular, Dr. Tait states that “. . . aluminum containers are fabricated from a 1000 series aluminum (UNS #A1XXX). 1000 series aluminum has a 0.04 maximum copper content specification whereas 2024 aluminum has a 3.8 to 4.9% copper content specification. Corrosion resistances and tendencies of 2024 aluminum and 1000 series aluminum are significantly different. . . . [Citations omitted.] Furthermore, liquid phase corrosion, atmospheric corrosion and crevice corrosion have different mechanisms for initiation. These different mechanisms occur in different types of environments and at significantly different rates of penetration through metals. Still further, corrosion potentials and rates are determined by the type of metal and the chemical composition of the environment to which the metal is exposed. . . .” Tait Declaration ¶18.

Equally important, Dr. Tait opines:

The tests to determine the corrosion resistance of a particular aerosol composition in an aerosol can are remarkably different from the test performed by Wilkins et al. for the 2024 aluminum alloy. Whereas the Wilkins et al. test simulated an atmospheric test in which the relative humidity in a chamber is cycled between high and low magnitudes at one atmospheric pressure, the surface inside an aerosol container is continuously exposed to a liquid mixture and a small area at the top of the aerosol container is continually exposed to a gas mixture of propellant and other formula ingredients at an elevated pressure. Whereas the Wilkins et al. test is performed at one atmospheric pressure, aerosol containers are under pressures of two or more atmospheres. Thus, the Wilkins et al. cyclic test does not simulate the continuous exposure of the Wilkins et al. '675 stripping composition inside bare aluminum containers under two or more atmospheric pressures. Tait Declaration ¶16.

Thus, the testing of the Wilkins et al. '675 composition on 2024 aluminum alloy with the Boeing Commercial Airplane Division corrosion test has no relevance to whether the Wilkins et al. '675 composition can be packaged with an aerosol propellant in a bare aluminum can.

Furthermore, the Gross et al. '623 reference does not support the Examiner's conclusion that the Wilkins et al. '675 composition can be packaged with an aerosol propellant in a bare aluminum can. Gross et al. are concerned with possible corrosion from their composition in coated steel cans and not with bare aluminum cans. The Gross et al. '623 invention solves this problem with a very specific group of corrosion resistance additives that work of the Gross et al. '623 composition. One cannot extract from this teaching that any paint stripping composition can be packaged in a coated steel can, and certainly not in a bare aluminum can.

In view of the foregoing, it is evident that the Wilkins et al. '675 and the Gross et al. '623 references are not properly combined because there is nothing in the Wilkins et al. '675 reference which would warrant the conclusion that the Wilkins et al. '675 peroxide stripping composition could be packaged with an aerosol propellant in a bare aluminum aerosol can.

In view of the foregoing, it is submitted that the alleged combination of Wilkins et al. '675 and Gross et al. '623 is inappropriate and should be withdrawn. Without this alleged combination of references, the rejection of claims 49, 51, 52, 54, 96, and 97 under 35 U.S.C. § 103(a) is inappropriate and all of these claims are patentable over the Examiner's alleged combination of references.

Even if the alleged combination of Wilkins et al. '675 and Gross et al. '623 could be made, however untenably, it still would not reach Applicants' invention. At best, the alleged combination would include packaging the Wilkins et al. '675 peroxide composition with an aerosol propellant and appropriate corrosion inhibitors in a lined steel can. This alleged combination falls far short of packing the Wilkins et al. '675 composition in an unlined aluminum can.

Claims 55 and 56 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675 in view of Gross et al. '623 as applied above and further in view of the Hart et al. U.S. Patent No. 3,970,584 (Hart et al. '584). This rejection is respectfully traversed.

Applicant believes that the arguments set forth above with respect to claim 49 as the uncombinability of Wilkins et al. '675 and Gross et al. '623 and the patentability of claim 49 over the alleged combination of references apply equally to this rejection as to the rejection of claims

49 from which these claims depend. Because this rejection is based on the alleged combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49, this rejection is also fatally defective because it does not disclose the subject matter of claim 49 from which claims 55 and 56 depend. It is therefore believed that claims 55 and 56 patently distinguished over the Wilkins et al. '765, the Gross et al. '623 and the Hart et al. '584 references.

Claim 57 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675 in view of Gross et al. '623 as applied against claim 49 and further in view of the Miles U.S. Patent No. 3,722,753. This rejection is respectfully traversed. Further, the alleged combination of these references is traversed. There is no support for the Examiner's representation that all of these references can be tentatively combined.

Because this rejection is also based on the untenable combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49, this rejection is also fatally defective. Because claim 57 depends from claim 49, it patently distinguishes over the Examiner's alleged combination of Wilkins et al. '675 and Gross et al. '623, with or without Miles '753, for all of the reasons stated above with respect to the rejection of claim 49. It is therefore submitted that claim 57 patently distinguishes over any tenable combination of Wilkins et al. '675, Gross et al. '623 and Miles '753.

Claims 58-59 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675, Gross et al. '623, Miles '753 and further in view of Barger et al. U.S. Patent No. 5,421,492 (Barger et al. '492). This rejection is respectfully traversed. Further, the alleged combination of these references is traversed. There is no support for the Examiner's representation that all of these references can be tentatively combined.

However, this rejection is based on the untenable combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49 and is thus fatally defective. Because claims 58 and 59 depend ultimately from claim 49, these claims patently distinguish over the Examiner's alleged combination of Wilkins et al. '675 and Gross et al. '623, with or without Miles '753 and with or without Barger et al. '492, for all of the reasons set forth above with respect to the rejection of claim 49. It is therefore submitted that claims 58 and 59 patentably distinguish over

any tenable combination of Wilkins et al. '675, and Gross et al. '623, Miles '753 and Barger et al. '492.

Claim 94 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675 in view of Gross et al. '623 and further in view of Spitzer et al. U.S. Patent No. 3,970,219 (Spitzer et al. '219). This rejection is respectively traversed. Further, the alleged combination of Wilkins et al. '675, Gross et al. '623, and Spitzer et al. '219 is traversed. There is no basis for the alleged combination of these references, especially with respect to Wilkins et al. '675 and Gross et al. '623.

Because this rejection is also based on the untenable combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49, this rejection is also fatally defective. Because claim 95 ultimately depends from claim 49, it patentably distinguishes over the alleged combination of Wilkins et al. '675, and Gross et al. '623, with or without the Spitzer et al. '219 reference, for all the reasons stated above with respect to rejection of claim 49. Is therefore submitted that claim 95 patentably distinguishes over any tenable combination of Wilkins et al. '675, Gross et al. '623, and Spitzer et al. '219.

Claim 94 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675 in view of Gross et al. '623 is applied against claim 49 and further in view of Hart et al. '584 as applied against claim 55 and further in view of the Barger et al. U.S. Patent 5,921,447 (Barger et al. '447). This rejection is respectfully traversed. Further, the alleged combination of Wilkins et al. '675, Gross et al. '623, Hart et al. '584 and Barger et al. '492 is traversed. There is no basis for making this alleged combination.

Because this rejection is also based on the untenable combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49, this rejection is also fatally defective. Because claim 94 depends from claim 55, which ultimately depends from claim 49, claim 94 patentably distinguishes over the Examiner's alleged combination of Wilkins et al. '675, Gross et al. '623, Hart et al. '584, with or without Barger et al. '447. It is therefore submitted that claim 94 patentably distinguishes over any tenable combination of these references.

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Filed: 08/15/03
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Examiner: Lorna M. Douyam
Group Art Unit: 1751

Finally, claims 98 and 99 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Wilkins et al. '675 and Gross et al. '623 as applied to claim 49 and further in view of the Lauwers et al. U.S. Patent No. 6,021,926 (Lauwers et al. '926). This rejection is respectfully traversed. Further, the alleged combination of Wilkins et al. '675, Gross et al. '623 with Lauwers et al. '926 is traversed. There is no basis for making this alleged combination, especially in view of the uncombinability of Wilkins et al. '675 and Gross et al. '623, as discussed above.

Furthermore, because this rejection is based on the untenable combination of Wilkins et al. '675 and Gross et al. '623 as applied against claim 49, this rejection is also fatally defective. Because claims 98 and 99 depend from claim 49, they patentably distinguish over the Examiner's alleged combination of Wilkins et al. '675 and Gross et al. '623, with or without the Lauwers et al. '926 reference.

In view of the foregoing remarks and amendments, and in view of the enclosed Tait Declaration, it is submitted that all of the claims are in condition for allowance. Early notification of allowability is respectfully requested.

Respectfully submitted,

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Dated: July 17, 2007

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